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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

KEVIN FEAGINS, YOLANDA FEAGINS, )  
KEVIN FEAGINS JR, a Minor, JOSHUA ) Case No. 2:11-cv-01121-GMN-GWF  
FEAGINS, a Minor, ANDRE FEAGINS, a )  
Minor, and JONATHAN FEAGINS, a Minor, )  
by and through their parents, KEVIN )  
FEAGINS and YOLANDA FEAGINS )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
THE TRUMP ORGANIZATION, a foreign )  
corporation, TRUMP RUFFIN )  
COMMERCIAL LLC, a foreign limited )  
liability company, TRUMP )  
INTERNATIONAL HOTEL & TOWER-LAS )  
VEGAS UNIT OWNERS ASSOCIATION, a )  
Nevada non-profit corporation, OTIS )  
ELEVATOR COMPANY a foreign )  
corporation, and DOES I through XXX, )  
inclusive, )  
 )  
Defendants. )  
 )

**PLAINTIFFS' MOTION FOR SANCTIONS**

Plaintiffs herein by and through their attorney of record, Bradley Paul Elley, Esq., pursuant to  
Local Rule 4-1 and the court' inherent powers hereby move for sanctions against Defendants and  
their counsel in the form of striking of Defendants' Answers to the Complaint and deeming the

1 allegations of the Complaint to be admitted, and for reasonable attorneys fees and costs against the  
2 appearing defendants, their counsel, Rebecca L. Mastrangelo, Esq., of Rogers, Mastrangelo, Carvalho  
3 & Mitchell and Josh Cole Aicklen, Esq. of Lewis Brisbois Bisgaard & Smith LLP and such flaw  
4 firms in bringing this motion, in an amount to be proven later.  
5

6 The Motion is made and based upon the following Memorandum of Points and Authorities,  
7 the pleadings and papers on file in this matter, as well as upon any oral argument the court may  
8 entertain at the hearing on this Motion.  
9

10 Dated: October 29, 2012.  
11

12 /s/ Bradley Paul Elley  
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19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I.**

21 **INTRODUCTION**

22 Plaintiffs filed their personal injury complaint in the Eighth Judicial District Court, Clark  
23 County, Nevada on May 9, 2011 arising from their horrifying experience in an elevator at the Trump  
24 Hotel International Las Vegas occurring on May 13, 2009. On June 30, 2011, Plaintiffs were served  
25 Defendant Otis Elevator Company's (hereinafter "Otis") demand for security for costs pursuant to  
26 NRS 18.130.  
27

28 On July 7, 2011, Defendant Trump Ruffin Tower I, LLC (hereinafter "Trump Ruffin") instead  
of adhering to the stay of all proceedings required by NRS 18.130 (1) pending the posting of the

1 demanded security demanded by Otis or the lapse of 30 days, filed in the state court action its Notice  
2 of Removal and served it upon Plaintiffs and Otis. Trump Ruffin also filed on July 7, 2011 the  
3 Petition for Removal in this court (*Document 1*), its Motion to Strike Plaintiffs' Prayer for Punitive or  
4 Exemplary Damages Pursuant to FRCP 12(F) (*Document 5*), its own demand for costs bond,  
5 (*Document 4*) certificate of interested parties (*Document 3*), and their statement concerning removal  
6 (diversity) (*Document 2*).

8 Next, Otis on July 7, 2011 ignored the automatic stay joined in Trump Ruffin's aforesaid  
9 motion to strike Plaintiffs' punitive damages claim for relief. (*Document 9*). Due to the intentional  
10 waiver by the demanding defendants of the automatic stay in effect caused by at least one of the  
11 demands to post the security, Plaintiffs filed and served their opposition to such motion to strike  
12 punitive damages on July 25, 2011(*Document 11*). On August 3, 2011, Trump Ruffin and Otis filed  
13 their separate replies to Plaintiffs' opposition to such motion (*Documents 13 & 14, respectively*).

15 On August 26, 2011 Otis filed its motion to dismiss for the alleged failure to comply with the  
16 demand for security (*Document 16*) and on August 29th Trump Ruffin, TR Commercial, and Owners  
17 Association (hereinafter "Trump defendants") filed and served their joinder to such motion  
18 (*Document 17*), never explaining their excuse for failing to adhere to the stay provided by the same  
19 nonresident security statute, NRS 18.130.  
20

21 The court entered an order on March 19, 2012 granting the Motion Demanding Security of  
22 Costs, denying without prejudice the Motion to Dismiss and the Motion to Strike. Most important for  
23 this motion for sanctions, the court ordered the entire case **stayed** pending Plaintiffs' compliance with  
24 the provisions of NRS 18.130, or upon further order of the court (*Document 29*). That further order  
25 was entered on May 7, 2012, when the Honorable Gloria M. Navarro lifted the stay, stating: "IT IS  
26  
27  
28 **HEREBY ORDERED** that the stay imposed by the Court on March 19, 2012 (Order, ECF No. 29) is

1 now LIFTED. This action shall return to the normal litigation track. Case stay lifted.” (*Document*  
2 40). Thus, there was no mention that the remainder of the countermanded scheduling order remained  
3 in effect or that the stay was lifted retroactively so that it could only be presumed that the parties  
4 needed to cooperate with obtaining the new scheduling order so that the interim status report could be  
5 filed, and that Defendants needed to answer the Complaint in a timely manner. It was impossible to  
6 comply with the January 19, 2012 scheduling order (*Document 26*) as written.

8 Plaintiffs decided not to seek their intended remand to state court and allowed such 30 day  
9 deadline to file such motion to expire. Instead, Plaintiffs filed their motion to extend discovery  
10 (*Document 46*) and contended that such stay order countermanded and rendered moot the order to  
11 extend discovery entered on January 19, 2012, requiring a new order extending discovery, because  
12 some of the deadlines (expert witness disclosure on and the last day to amend pleadings or add parties  
13 on April 27, 2012) and the Interim Status Report filing deadline of April 27, 2012 per Local Rule 26-  
14 3 were impossible to comply with unless the stay order was violated. Additionally other deadlines  
15 had been frustrated to timely complete.

18 All of the appearing defendants instead of complying with such order willfully disobeyed the  
19 lift stay order by instead of answering the Complaint allowed themselves to become in default in  
20 May, 2012, resulting in Plaintiffs eventually demanding that they have their answers on file and  
21 cooperate with Plaintiffs in obtaining a new scheduling order so that the parties could comply with  
22 the Local Rule 26-3 mandate to file the interim status report (See Attachments #s 1, 2, & 3 (Exhibits  
23 A, B, & C) of *Document 49*).

24 . Otis contemporaneously filed with its Answer its Motion for Summary Judgment (*Document 44*)  
25 and the Trump defendants filed their joinder to such motion on July 25, 2012 (*Document 45*). All of  
26 these defendants claim in the pending motion for summary judgment that discovery has been  
27 completed by virtue of what was believed by Plaintiffs to be the countermanded January 19, 2012  
28

scheduling order, Defendants abject failure to comply with same, and their opposition to Plaintiffs efforts to enable the parties to file an interim status report, notwithstanding. Plaintiffs were unable to enlist Defendants' cooperation in obtaining a stipulation to extend discovery, and therefore, the motion to extend discovery was brought after three of the Trump defendants filed their answers to the Complaint (*Document 41*) and Otis filed its answer (*Document 43*) on July 20, 2012, after being in default and in violation of the lift stay order for almost two months. After the respective oppositions were filed by the Trump defendants and Otis on August 14, 2012 (*Documents 49 & 50*) the reply to such oppositions was filed on August 23, 2012 (*Document 54*), never addressing in their oppositions any excuse for their contemptuous conduct for violation of such lift stay order.

The Honorable George Foley, Jr., U. S. Magistrate presided at the hearing on August 24, 2012 in which Plaintiffs' motion was denied (*Document 55*). The transcript of the proceedings was filed on August 30, 2012 (*Document 58*). Such transcript discloses the obvious fact in accordance with the ruling supported by Defendants that Defendants were obligated to cooperate with Plaintiffs to file the 60 day joint interim status report pursuant to Local Rule 26-3. The pertinent transcript passage on page 19, lines 9-24. referring to such rule states:

9 MR. ELLEY ... I don't know why the defense is being given –  
 10 Being given a -- a free pass on this –  
 11 THE COURT: What –  
 12 MR. ELLEY: -- Your Honor.  
 13 THE COURT: -- what joint status report are you referring to? I'm trying to  
 14 look for it. Just  
 15 so I understand what --  
 16 what –  
 17 MR. ELLEY: It's --  
 18 THE COURT: -- what the argument –  
 19 MR. ELLEY: -- it's the one that says 60 days before  
 20 discovery closes you need to file this interim status report.  
 21 Um...  
 22 THE COURT: Well, I think that's a -- an obligation  
 23 on -- on both parties.  
 24 MR. ELLEY: Yes, it is your Honor.

1           24     THE COURT: Yeah. Right.

2           25     MR ELLEY: Absolutely.

3           Therefore, Defendants were already put on notice by this Court that they needed to comply  
4 with the lift stay order, but Defendants did nothing to purge such contemptuous failure to comply.

5           On September 9, 2012, Plaintiffs' Objections to Denial of Plaintiffs' Motion to Extend  
6 Discovery (Second Request) was filed (*Document 60*).

7           On October 4, 2012, Plaintiffs' Reply to Opposition/Response of Defendants to Plaintiffs'  
8 Objections to Magistrate's Denial of Plaintiffs' Motion to Extend Discovery (Second Request) was  
9 filed (*Document 63*) in response to Defendant Otis Elevator's (*Document 61*) and the Trump  
10 Defendants' (*Document 62*) September 24, 2012 Oppositions to Plaintiffs' Objections to  
11 Magistrate's Denial of Plaintiffs' Motion to Extend Discovery (Second Request) (*Document 60*).  
12 Such Oppositions again failed to address any excuse for Defendants contemptuous conduct, despite  
13 being put on notice to comply with the mandate to file the interim status report a month earlier.  
14

15           On October 19, 2012 the order denying Plaintiffs' aforesaid objections was filed (*Document*  
16  
17 *65*).

18           Defendants have steadfastly maintained in their oppositions to Plaintiffs' attempts to obtain  
19 additional discovery that the Order lifting the stay required the Plaintiffs to proceed with discovery by  
20 requesting such an extension in a timely manner within the three weeks before Defendants defaulted  
21 and disobeyed the lift stay order in May, 2007. Defendants have remained silent in their conduct and  
22 in their written oppositions about their obligations mandated by the same lift stay order to themselves  
23 proceed with the litigation by filing a timely response to the complaint in May, 2012, rather than July  
24 after Plaintiffs' demand that they do so and by timely compliance with the filing of the required joint  
25 interim status report, which Defendants have to this day ignored as well. Defendants have relied on  
26  
27  
28

1 the same lift stay order to oppose and prevent Plaintiffs' pursuing further discovery and extending the  
2 deadline for the filing of the missing interim status report, believing that they can ignore the mandates  
3 of the lift stay order applying to them.

4  
5 Defendants cannot have it both ways: they cannot obtain the spoils of their opposition to  
6 Plaintiffs' efforts to obtain discovery and to comply with the filing of the joint interim status report  
7 but at the same time fail to be accountable for their contemptuous violation of the lift stay order and  
8 the consequent sanctions for such willful bad faith conduct in violating such lift stay order by their  
9 noncompliance resulting in their default, and Defendants' refusal to file the joint interim status report  
10 and their continued failure to cooperate to attempt to file same and avoid sanctions for such lack of  
11 cooperation, especially after being ordered to proceed. Therefore, this motion seeks appropriate  
12 sanctions by striking the answer to the complaint, having all allegations of the Complaint be deemed  
13 admitted, and obtaining costs and attorneys fees for having to seek such sanctions.  
14  
15

## 16 17 II.

### 18 **OBEDIENCE TO THE ORDER LIFTING THE STAY REQUIRED THAT THE ANSWERS** 19 **TO PLAINTIFFS' COMPLAINT BE TIMELY FILED IN MAY, NOT JULY**

20 The May 7, 2012 order lifting the stay and further ordered the return to action returned "to the  
21 normal litigation track". The normal litigation track required that they file their respective answers or  
22 responses to the complaint at most within 21 days after the order was lifted on May 7, 2012 or they  
23 were in default, FRCP 12. All of these appearing Defendants violated this lift stay order to return to  
24 the litigation track by the timely filing of their answers last May, but have yet to offer any  
25 explanation for such contemptuous conduct especially after being admonished to do so by the  
26 undersigned counsel's July, 2012 demand for same (See Attachments #s 1, 2, & 3 (Exhibits A, B, &  
27 C) of *Document 49*).

28 ///

///

III.

**OBEDIENCE TO THE ORDER LIFTING THE STAY REQUIRED THAT DEFENDANTS COUNSEL COOPERATE WITH PLAINTIFF IN SEEKING COMPLIANCE IN FILING THE INTERIM STATUS REPORT, WHICH THEY STILL HAVE NOT DONE**

Local Rule of Practice for the United States District Court for the District of Nevada Rule 11 26-3 pertains to interim status reports and states:

Not later than sixty (60) days before the discovery cut-off, the parties shall submit an interim status report stating the time they estimate will be required for trial, giving three (3) alternative available trial dates, and stating whether, in the opinion of counsel who will try the case, trial will be eliminated or its length affected by substantive motions. This status report shall be signed by counsel for each party or the party, if appearing in *pro se*.

Once the stay order issued on March 19, 2012 and because it was not lifted until May 7th the joint interim status report could not be filed by its deadline date on April 27th. Although Plaintiffs attempted to comply by obtaining a new discovery deadline which would have enabled compliance possible and admonished Defendants that they needed to do so, Defendants' respective counsel have remained resolute refusing to allow any extended discovery deadline by stipulation, and Plaintiffs' formally requested discovery extension by the above-described motion to extend discovery and the objections to the ruling denying such objections. Plaintiffs' undersigned counsel has sought such discovery extension and concomitant interim status report extension so that he could comply with this local rule. Defendants' respective counsel, on the other hand, have yet to offer up any excuse for such compliance failure, despite being challenged to do so by the undersigned counsel and being told to do so by Judge Foley. Defendants have therefore, willfully and in bad faith refused to comply with this local rule.



Plaintiffs' position differs from that of Defendants. Plaintiffs contended that the underlying scheduling order deadline had been countermanded, and therefore, required a new scheduling order. This argument relied upon the decision in *In re Transamerica Corp.*, 184 F.2d 319 (9th cir. 1950), *cert. denied* 340 U.S. 883, 71 S.Ct 197 (1950), wherein it was explained that obedience to a injunctive order restraining certain conduct necessarily countermanded or reversed previous orders that they had been told to do, *Id.* at 322. Plaintiffs also argued that the stay order in this action was no less of a countermanding or reversal of such scheduling order otherwise in effect and a new scheduling order is needed, despite Defendants' lack of cooperation. Defendants denied such new order was required, tacitly admitting that they intentionally have ignored their obligation to file the interim status report. They remain unrepentant in such contempt, with the result that Plaintiffs still are unable to file this mandated "joint" interim status report.

#### IV.

#### **DEFENDANTS WILLFUL, BAD FAITH CONDUCT DESERVES SEVERE SANCTIONS IN ACCORDANCE WITH LOCAL RULE 4-1**

Local Rule of Practice for the United States District Court for the District of Nevada Rule 1A 4-1 states in pertinent part:

##### **LR 1A 4-1. SANCTIONS.**

The Court may, after notice and opportunity to be heard, impose any and all appropriate sanctions on an attorney or party appearing *in pro se* who, without just cause: ...

(c) Fails to comply with these Rules; or,

(d) Fails to comply with any order of this Court.

It appears to be undisputed that Defendants attorneys can be sanctioned for violation of this local rule by their failure to comply with the lift stay order of this Court. The Honorable Gloria M.

1 Navarro has recently indicated that sanctions pursuant to such rule may also be levied against a party  
2 for the conduct of its attorney or if appearing pro se. Referring to the failure to of a pro se plaintiff to  
3 comply with an order of this Court she stated: “The Court may also impose appropriate sanctions on  
4 a party for failure to comply with an order of the court. D. Nev. R. IA 4- 1.” *Coleman v. American*  
5 *Home Mortgage Serving, Inc.*, 2012 WL2978838 (D.Nev.).  
6

7         These violations by Defendants are no coincidence, as they appear to have been done in a  
8 concerted, calculated manner giving rise to transgressions of law including criminal contempt,  
9 combination to resist process, and conspiracy. Criminal contempt, NRS 199.340, states in pertinent  
10 part: “Every person who shall commit a contempt of court of any one of the following kinds shall be  
11 guilty of a misdemeanor: ... 4. Willful disobedience to the lawful process or mandate of a court;  
12 ....”  
13

14         In their zeal to game Plaintiffs in order to deny Plaintiffs’ the right to utilize their expert  
15 witness and to obtain additional discovery Defendants’ willful disobedience to lift stay order’s  
16 mandate to file their answers to the complaint is an act of criminal contempt and deserves to be  
17 punished accordingly.  
18

19         Combination to resist process, NRS 199.410 applies when there is more than one offending  
20 party. It states: “Every person who shall enter into a combination with another to resist the execution  
21 of any legal process or other mandate of a court of competent jurisdiction, under circumstances not  
22 amounting to a riot, shall be guilty of a gross misdemeanor.” That this mandate has been resisted by  
23 Otis and the Trump defendants cannot be disputed, especially since they have all failed to file timely  
24 answers and have joined in the oppositions to Plaintiffs efforts to comply with Local rule 26-3, even  
25 after being told by Judge Foley that they need to comply.  
26  
27

28         Criminal conspiracy, NRS 199.480 states in pertinent part:

1 3. Whenever two or more persons conspire:

2 (f) To commit any act ... for the perversion or corruption of public justice or the due  
3 administration of the law; or

4 (g) To accomplish any criminal or unlawful purpose, or to accomplish a purpose, not  
5 in itself criminal or unlawful, by criminal or unlawful means,  
6 each person is guilty of a gross misdemeanor.

7 Defendants have conspired to corrupt the public justice or the due administration of the law to  
8 accomplish the prevention of further discovery by Plaintiffs with the intent to avoid Plaintiffs' trial on  
9 the merits, even though the means by which Defendants seek to further this conspiracy required that  
10 they willfully and in bad faith disobey the lift stay order mandates to timely file their answer and to  
11 comply with the requirement to file the joint interim status report. Defendants need to be  
12 appropriately sanctioned by striking their answers to the Complaint, having the allegations of the  
13 Complaint be deemed admitted, and paying sanctions for Plaintiffs having to bring this motion.  
14

15 To do nothing would be allowing Defendants' criminal conduct and willful disobedience of  
16 the lift stay order and corrupting the public justice to be rewarded.  
17

18 **V.**  
19

20 **DEFENDANTS WILLFUL, BAD FAITH CONDUCT DESERVES SEVERE SANCTIONS IN**  
21 **ACCORDANCE WITH THE COURT'S INHERENT POWERS**

22 The United States District Courts have the power to sanction under their inherent court  
23 powers, not only for bad faith, but also for willfulness or fault by the offending party, *Halaco Eng'g*  
24 *Co. v. Costle*, 843 F.2d 376, 380 (9th Cir. 1988). The failure to comply with discovery orders and a  
25 court order for filing briefs is sanctionable under the court's inherent powers, being tantamount to  
26 bad faith, *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767 (1980). "Courts are invested with  
27 inherent powers that are 'governed not by rule or statute but by the control necessarily vested in court  
28

1 to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.”  
2 *Unigard Security. Insurance Co. v. Lakewood Engineering & Manufacturing Corp.* 982 F.2d 363,  
3 368 (9th Cir.1992). Courts possess the inherent power to impose attorneys’ fees against counsel for  
4 “bad faith litigation or willful disobedience of court rules or orders.” *Zambrano v. City of Tustin*, 885  
5 F.2d 1473, 1482 (9th Cir. 1989). The court must make an explicit finding of bad faith or willful  
6 misconduct before imposing sanctions under its inherent sanctioning authority, *In re Lehtinen*, 564  
7 F.3d 1052, 1058 (9th Cir.2009). A variety of sanctions can be imposed and even include the award  
8 of compensatory damages against the defendant for the failure of the defendant’s offending attorneys  
9 to submit to lawful mandates, *B.K.B. v. Maui Police Dep’t.*, 276 F.3d 1091, 1108 (9th Cir.2002).  
10  
11

12 If all of the bad faith conduct is not capable of being adequately sanctioned under statutes or  
13 court rules the court may safely rely on its inherent powers to do so. It is not necessary for a court  
14 first to apply rules and statutes containing sanctioning provisions to discrete occurrences before  
15 invoking its inherent powers to redress remaining instances of sanctionable conduct, especially if the  
16 rules and statutes are not “up to the task”, *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50, 51 (1991).  
17

18 Plaintiffs could easily have filed the motion to extend discovery by the June 27, 2012  
19 discovery deadline if not by stipulation, so there never would have been the issue of whether the  
20 January 19, 2012 scheduling order had been countermanded, requiring an entirely new scheduling  
21 order, as Plaintiffs contended, or it was still capable of performing with modifications as Defendants  
22 have successfully contended, even though they have admitted their contemptuous conduct in the  
23 process. Plaintiffs have been prejudiced in their efforts to oppose the summary judgment and to  
24 proceed with trial thereafter. Defendants should not be allowed to obtain any litigation advantage by  
25 their contemptuous, willful, bad faith conduct. To not levy the severe sanctions requested would only  
26 encourage this kind of conduct in the future and reward Defendants instead of punish them.  
27  
28

1 By analogy, the failure to obey an order compelling discovery provides for sanctions pursuant  
2 to Federal Rule of Civil Procedure Rule 37(b) (2) (A). The sanctions include a non-exhaustive list,  
3 including the striking of an answer and deeming an issue admitted, and awarding attorneys fees and  
4 costs. This Court's inherent plenary powers are far greater such that at least the requested sanctions  
5 should be levied.  
6

### 7 CONCLUSION

8 This motion for sanctions striking the answers to and deeming the allegations of the  
9 Complaint admitted should be granted and attorneys fees and costs should be awarded. Defendants  
10 willfully and in bad faith disobeyed the lift stay order by refusing to timely answer the Complaint.  
11 They also opposed Plaintiffs' efforts to seek extension of the discovery deadline to enable both  
12 Plaintiffs and Defendants to comply with Local Rule 26-3 by filing the mandated joint interim status  
13 report. Even after being put on notice by U.S. Magistrate Judge Foley that Defendants were  
14 obligated to file such status report they have contemptuously continued to oppose such efforts.  
15  
16

17 Dated: October 29, 2012.

18  
19 /s/ Bradley Paul Elley  
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24 Telephone: (775) 831-8800  
25 Attorney for Plaintiffs  
26  
27  
28

**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b), I hereby certify that I am an employee of the office of Bradley Paul Elley, Esq. and that, on October 29, 2012, a true and correct copy of **PLAINTIFFS' MOTION FOR SANCTIONS** was served via the United States District Court CM/ECF system and a copy was sent by electronic notice to the following:

Josh Cole Aicklen, Esq.  
David B. Avakian, Esq.  
Lewis Brisbois Bisgaard & Smith LLP  
6385 S. Rainbow Blvd., Ste. 600  
Las Vegas, NV 89118

Attorneys for Defendant Trump Ruffin Tower I, LLC, Trump Ruffin Commercial LLC, and  
Trump International Hotel & Tower-Las Vegas Unit Owners Association

Rebecca L. Mastrangelo, Esq.  
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Attorneys for Defendant Otis Elevator Company

DATED: October 29, 2012.

/s/ Elizabeth Lintner  
ELIZABETH LINTNER